

RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, California 93408

APN 040-211-026

INCLUSIONARY HOUSING AGREEMENT

THIS AGREEMENT is made and entered into this 19th day of July, 2016, by and between MI CREEKSIDE, LLC, a Delaware limited liability company, hereinafter referred to as "Subdivider," and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, Subdivider is record owner of certain real property (hereinafter referred to as "Subdivider's Property") located in the unincorporated area of the County of San Luis Obispo, State of California, which is more particularly described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, Subdivider proposes to construct a mixed-use development including a one hundred seven (107) unit residential development on Subdivider's Property known as Tract 2994 (hereinafter referred to as the "Project"); and

WHEREAS, Subdivider has prepared a proposed final tract map for Tract 2994 in the County of San Luis Obispo for approval by County; and

WHEREAS, as agreed to by Subdivider and as a condition precedent to the approval of said final tract map by County, Subdivider is required by condition 29 of the conditions of approval of the vesting tentative tract map to enter into an agreement with

County to provide five (5) residential units within the Project (hereinafter referred to as the "affordable units") as new dwelling units which will be affordable housing for persons and families of workforce income, moderate income, lower income, and very low income, as defined in San Luis Obispo County Code Sections 22.12.070 and 22.12.080, for a continuous period of forty-five (45) years or thirty (30) years pursuant to the provisions of Section 22.12.070F of the San Luis Obispo County Code; and

WHEREAS, by the execution of this agreement by Subdivider and County, and the subsequent performance of the obligations of this agreement by Subdivider, Subdivider will have satisfied the requirements of said condition of approval of the vesting tentative tract map; and

WHEREAS, Subdivider has supplied County with a current title company preliminary title report or preliminary subdivision guarantee listing all trust deed beneficiaries and mortgages, if any, under prior recorded deeds of trust and mortgages on the Subdivider's Property.

NOW, THEREFORE, in consideration of County approval of a final tract map for Tract 2994, and the benefits conferred thereby on Subdivider and Subdivider's Property, and in further consideration of the mutual promises, covenants and conditions herein contained and the substantial public benefits to be derived therefrom, the parties hereto agree as follows:

1. Location of the residential units. Subdivider agrees to construct and place the five (5) affordable units to be provided and sold pursuant to this agreement within the residential development located on Subdivider's Property. In accordance with San Luis Obispo County Code Section 22.12.080, the Subdivider shall provide two (2) units for

workforce income households, one (1) unit for moderate income households, one (1) unit for lower income households, and one (1) unit for very low income households. As shown on Exhibit B, the two workforce income units shall be located on lots 53 and 60; the moderate income unit shall be located on lot 52; the lower income unit shall be located on lot 50; and the very low income unit shall be located on lot 51. The five affordable units shall be three-bedroom, two bath units, totaling 1,150 square feet each. Subdivider shall comply with all applicable County ordinances and regulations including those regulating land use and construction permits.

2. Subdivider to provide affordable units. Within the time period set forth in paragraph 10 below, Subdivider shall construct, provide, and sell all of the five (5) affordable units on Subdivider's Property to persons and families of workforce income, moderate income, lower income, and very low income, as defined in San Luis Obispo County Code Sections 22.12.070 and 22.12.080, the provisions of which are incorporated by reference herein as though set forth in full. The sales prices of such units shall not exceed the amount determined by the formula set forth in San Luis Obispo County Code Section 22.12.070. The sales prices shall be adjusted for unit size and shall be calculated as of the time that the units are sold. When an affordable unit is made available for occupancy, then a single group of up to five market-rate units may also be made available for occupancy. Once all five (5) affordable units have been made available for occupancy, Subdivider may occupy all remaining units without further constraint.

3. Continued availability of residential units. The affordable units provided under this agreement shall be subject to the long-term housing affordability provisions described in San Luis Obispo County Code Section 22.12.070 for a continuous period of

forty-five (45) years or thirty (30) years following the date of close of escrow of the sale of each affordable unit as required by the provisions of San Luis Obispo County Code Section 22.12.070F.

4. Maximum residential unit price. The affordable units to be offered for sale and their maximum sales prices shall be as follows, unless before the time of sale interest rates change or new median income figures for the County as adopted by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD" and published in California Code of Regulations, title 25, section 6930, become effective:

Family Income Group	Number of Units	Number of Bedrooms	Maximum Sales Price of Unit
Workforce	2	3	\$504,000
Moderate	1	3	\$364,000
Lower	1	3	\$188,000
Very Low	1	3	\$127,000

5. Maximum household income levels. The maximum income levels for eligible purchasers is as follows, unless before the time of sale new median income figures for the County (as adopted by HUD and published in California Code of Regulations, title 25, section 6930) become effective:

Persons in Household	Workforce	Moderate	Lower	Very Low
1	\$86,240	\$64,700	\$42,250	\$26,400
2	\$98,560	\$73,900	\$48,250	\$30,200
3	\$110,880	\$83,150	\$54,300	\$33,950
4	\$123,200	\$92,400	\$60,300	\$37,700
5	\$133,040	\$99,800	\$65,150	\$40,750
6	\$142,880	\$107,200	\$69,950	\$43,750
7	\$152,800	\$114,600	\$74,800	\$46,750
8	\$162,640	\$121,950	\$79,600	\$49,800

As used in this agreement, the term "household" shall mean the occupants (excluding minors) of each affordable unit who contribute to the household income.

6. Certification of eligible purchasers. Subdivider shall certify to the Director of Planning and Building of the County (hereinafter referred to as the "Planning Director") the income eligibility of potential purchasers of the affordable units under this agreement and shall submit to the Planning Director a completed and executed "Sales Certification Form," a copy of which is attached hereto as Exhibit B and incorporated by reference herein as though set forth in full. Prior to the close of escrow, such certification of eligible purchasers shall be required to be approved by the Planning Director, or his designee, as meeting the income eligibility requirements set forth in this agreement. Subdivider shall sell said affordable units only to certified eligible purchasers approved by the Planning Director or his designee.

7. Purchaser's intent to reside in unit. For each of the affordable units sold under the provisions of this agreement, Subdivider agrees to obtain, prior to the close of each separate escrow, a declaration executed by the purchasers indicating the purchasers' intent to reside in the unit as their sole and principal residence. The form of the declaration, which shall be delivered to and filed with the Planning Director of the County, is attached hereto as Exhibit C and incorporated by reference herein as though set forth in full.

8. Subdivider advertising and best efforts in marketing units. Subdivider agrees to advertise, market and show the affordable units, which are the subject of this agreement, to potential purchasers and make available to any interested person information and assistance concerning their purchase by persons and families of workforce, moderate, lower, and very low incomes. In addition, Subdivider shall make

best efforts in exploring available alternatives and locating financing for persons eligible to purchase the affordable units, and shall cooperate and take affirmative steps to the fullest extent possible to market, show, advertise, sell and make certain that qualified eligible purchasers can be found for the affordable units.

9. Affordable Housing Agreement, promissory note, and deed of trust. Subdivider agrees, as a condition of the sale of each of the affordable units sold under the provisions of this agreement, to have the purchasers of each affordable unit deposit in escrow an executed and acknowledged "Affordable Housing Agreement" with the County, a promissory note, and a second deed of trust, all in a form approved by County Counsel, which comply with all of the provisions of San Luis Obispo County Code Section 22.12.070 and this agreement. The "Affordable Housing Agreement" and second deed of trust shall be recorded at the close of escrow immediately following recordation of the purchasers grant deed and the first deed of trust.

10. Time for performance. Subdivider shall construct, provide, and sell all five (5) affordable units required by this agreement to persons and families of workforce, moderate, lower, and very low incomes within three (3) years after the date of execution of this agreement. Time is of the essence in carrying out the terms of this agreement. Provided, however, that in the event good cause is shown, the Planning Director may extend the time for completion and sale of the affordable units under this agreement. The Planning Director shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

11. Indemnification. The Subdivider shall defend, indemnify and save harmless the County of San Luis Obispo, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments, or liability occasioned by the

performance or attempted performance of the provisions hereof, or in any way arising out of this agreement, including, but not limited to, those predicated upon theories of violation of statute, ordinance or regulation, violation of civil rights, inverse condemnation, equitable relief, or any wrongful act or any negligent act or omission to act on the part of the Subdivider or of agents, employees, or independent contractors directly responsible to the Subdivider; providing further that the foregoing obligations to defend, indemnify and save harmless shall apply to any wrongful acts, or any passively negligent acts or omissions to act, committed jointly or concurrently by the Subdivider, the Subdivider's agents, employees, or independent contractors and the County, its agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the Subdivider to indemnify the County against any responsibility or liability in contravention of Section 2782 of the Civil Code.

12. No assignment without consent. Subdivider shall not have the right to assign or transfer this agreement, or any part hereof, without the prior written consent of the County.

13. Binding on successors in interest. All provisions of this agreement shall be considered an equitable servitude and covenants running with the land pursuant to California Civil Code Sections 1460 and 1468, and shall be binding on the parties hereto and their heirs, assigns and successors in interest. Any conveyance, transfer, or sale made by Subdivider of said property or any portion thereof shall be deemed to incorporate by reference, and be subject to, each of the provisions of this agreement.

14. Effect of waiver. County's waiver of the breach of any one term, covenant or provision of this agreement shall not be a waiver of a subsequent breach of the same

term, covenant or provision of this agreement or of the breach of any other term, covenant or provision of this agreement.

15. Enforceability. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

16. Enforcement of provisions.

(a) In the event of a violation or an attempted violation of any of the terms, covenants, or restrictions of this agreement by Subdivider, the County shall give written notice thereof to Subdivider by United States first class mail.

(b) If such violation or attempted violation is not corrected to the satisfaction of the County within fifteen (15) days after the date such notice is mailed, or within additional time approved by the Director of Planning and Building, the County may, without further prior notice, declare in writing a default under this agreement effective on the date of such declaration of default.

(c) Any such declaration of default may be cause for appropriate action to be taken by the County including, but not limited to, seeking an injunction against any violation or attempted violation of this agreement, requesting judicial appointment of a receiver to take over and operate the Project on Subdivider's Property in accordance with the terms, covenants, and restrictions of this agreement, seeking specific performance of the terms and provisions of this agreement, or seeking such other relief as may be appropriate.

17. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with

the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

18. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices shall be addressed as follows:

To the County: Director of Planning and Building
County of San Luis Obispo
976 Osos Street, Room 300
San Luis Obispo, California 93408

To the Subdivider MI Creekside, LLC
330 James Way, Suite 270
Post Office Box 13
Pismo Beach, California 93448

Either party may change such address by providing notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

19. Subdivider not agent of County. Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of County in connection with the performance of Subdivider's obligations under this agreement.

20. Entire agreement and modifications. This agreement sets forth the full and entire understanding of the parties regarding the matter set forth herein, and any other prior or existing understandings or agreements by the parties, whether formal or informal, regarding such matters are hereby superseded or terminated in their entirety. No changes, amendments, or alterations to the provisions of this agreement shall be effective unless in writing and executed by the parties hereto or their assigns and successors in interest.

21. Agreement to be recorded. Subdivider and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo, and such recordation of this agreement shall serve as constructive notice of the obligations contained herein to be performed by the Subdivider and the successors in interest to all or any portion of Subdivider's Property.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

SUBDIVIDER

MI CREEKSIDE, LLC
A Delaware limited liability company

By: **MI BUILDERS III, LLC**
A Delaware limited liability company
Its: **Manager and Sole Member**

By: **PRESIDIO MERCED LAND II ACTIVE, LLC**
A Delaware limited liability company
Its: **Co-Manager**

By:  _____

Name: **Michael M. Sullivan**

Title: **Authorized Representative**

By: **GGCCB, LLC**
A California limited liability company
Its: **Co-Manager**

By:  _____

Name: **GARY H. GROSSMAN**

Title: **Managing Member**

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: Bug O
Deputy County Counsel

Dated: 8.30.16

APPROVED AS TO CONTENT:

JAMES A. BERGMAN, AICP
Director of Planning and Building

By: [Signature]

Dated: 8.30.2016

[NOTE: This Agreement to Provide Housing Units for Persons and Families of Lower/Very Low Income will be recorded. All signatures to this agreement must be acknowledged by a notary.]

369plhagr.docx

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF ~~CALIFORNIA~~

COUNTY OF ~~SAN LUIS OBISPO~~

**Minnesota
Hennepin**

ss.

On July 18, 2016, 20¹⁶, before me, **Amy Sundell**,
a Notary Public, in and for the State of California, personally appeared _____
Michael M. Sullivan, who proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s) or the entity upon behalf of which the person(s) acted, executed
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Amy Sundell*
Signature of Notary Public

[SEAL]

EXHIBIT A

All of Tract 2994, in the County of San Luis Obispo, State of California, according to map recorded May 26, 2016, in Book 35, Pages 97 through 111 of Maps, in the Office of the County Recorder of said County.

EXHIBIT B



**11 LOTS WITH UNIT "A"
FLOOR PLAN**

**= PROPOSED
INCLUSIONARY LOTS**

**5 SLOTS PROPOSED FOR DEED RESTRICTION
AS FOLLOWS:**

LOT 51 - VERY-LOW (50% MEDIAN)
 LOT 50 - LOWER INCOME (90% MEDIAN)
 LOT 52 - MODERATE INCOME (120% MEDIAN)
 LOT 53 - WORK FORCE (160% MEDIAN)
 LOT 50 - WORK FORCE (180% MEDIAN)

A	Rev.	Date	Description of Revisions	By
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GRANITE SCALE

[illegible]

EXHIBIT C

SALES CERTIFICATION FORM

Estimated closing date of escrow on sale of unit: _____

1. Name of purchaser: _____

Mailing address: _____

City/State: _____ ZIP: _____

Day phone where purchaser may be reached: area code (____) _____

2. Purchaser's annual gross income: _____

3. Unit being purchased: _____

4. Purchase price: _____

5. Down payment: _____

6. Lending institution: _____

Mailing address: _____

City/State: _____ ZIP: _____

Day phone where lender may be reached: area code (____) _____

7. Interest rate: _____

8. Term of loan (years): _____

9. Monthly loan payment (excluding property taxes): _____

10. Total closing costs: _____

CERTIFICATION OF ACCURACY AND COMPLETENESS: I hereby certify that to the best of my knowledge the information contained herein is true, complete, and correct.

Print name and sign - Subdivider Date

Print name and sign - Purchaser Date

EXHIBIT D

DECLARATION OF PURCHASER

I _____, declare as follows:

1. I am purchasing (or am one of the purchasers if more than one person will be on the deed) a dwelling unit referred to as: _____

2. I intend to reside in the unit as my sole and principal residence.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, 20____, at _____, California.

PURCHASER

RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

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County Government Center
San Luis Obispo, CA 93408

APN 040-211-026

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT. (THIS NOTICE REQUIRED BY CALIFORNIA CIVIL CODE SECTION 2953.3.)

The undersigned, beneficiary under that certain Deed of Trust dated July 19, 2016, recorded July 29, 2016, as Document No. 2016-036834, in the Official Records of the County of San Luis Obispo, State of California, does hereby join in, and consent to, each and all of the terms and provisions of the Inclusionary Housing Agreement attached hereto, and does hereby subordinate the interests of its Deed of Trust to the entire effect of that inclusionary housing agreement.

SIGNED AND EXECUTED this 26th day of August, 2016.

TRUST DEED BENEFICIARY

BANK OF THE WEST, a California Banking corporation

By: Sarah J. Buens
Name: Sarah J. Buens
Its: Vice President

ALL SIGNATURES MUST BE NOTARIZED.

BENEFICIARY MUST SIGN STATEMENT.
TRUSTEE CANNOT SIGN ON BEHALF OF BENEFICIARY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Contra Costa)On 8/26/16 before me, Kristy Nunes, Notary Public,
Date Here Insert Name and Title of the Officerpersonally appeared Sarah J. Burns
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kristy Nunes
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____